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Message from the Chairperson

The 2011-2012 Annual Report of the Canada Agricultural Review Tribunal, the fourth issued since my assuming the position of Chairperson, captures the exciting activities which have occurred in the fiscal year covering April 1, 2011 to March 31, 2012. As well, it sets out some notable events that have occurred since the end of this fiscal year that will have a significant and beneficial effect on the Tribunal in the coming years. Looking at the year in review, the most notable change is the dramatic (over 50%) increase in cases coming to the Tribunal. Despite a limited human resources complement over the year, the Tribunal was able to process the increasing number of files before the Tribunal and even to increase the number of first instance decisions issued compared to last year. As well as pursuing its quasi-judicial decision-making function, the Tribunal again this year pursued, with gusto, its three other activity areas of: (1) innovation and outreach to stakeholders and the general public; (2) development of best practices; and (3) sound financial management and administration of Tribunal operations.

With respect to the provision of timely and fair adjudication, the Tribunal continued to improve processes to move along more quickly new oral hearing cases and written review cases to ensure reasonable wait-times for applicant farmers, transporters, owners of auction barns and slaughterhouses, as well as travellers coming into Canada. With respect to outreach and the development of best practices to stakeholder parties that appear before the Tribunal, to the Government of Canada and Parliament, to Tribunal personnel, and to the general public, the Tribunal continues to make its forms and practices available to all through its website (*http://cart-crac.gc.ca*) so parties can familiarize themselves with the Tribunal's practices and be assured that the practices are being applied consistently. Finally, as this report sets out, the Tribunal continues to review and streamline its activities to best exercise appropriate stewardship and risk management, working with the Minister and his Department to secure the necessary security, human, financial, capital, and information technology resources permitting the Tribunal to achieve its operationally-mandated activities while mitigating risk.

Three recent events have occurred since the closing of the fiscal year which merit mention, as each will have a significant effect on the operation of the Tribunal in the coming years. In April, the Federal Court of Appeal released its decision providing direction to the Tribunal on the admissibility of certain requests for review, a decision which will guide the Tribunal in the reform of its rules of procedure. Second, the human resources complement at the Tribunal was modified with the departure of two indeterminate employees, which will require the reassessment of human resources requirements at the Tribunal. Third, on June 21, 2012, the Minister announced the Order-in-Council appointment of Dr. Bruce La Rochelle as part-time Member of the Tribunal. His most welcome appointment will double the decision-makers at the Tribunal and provide new energy to attack the increasing caseload at the Tribunal.

I am proud, therefore, to present to you, Minister, the 2011-2012 Annual Report of the Tribunal which represents my continuing commitment to the people of Canada to lead the Tribunal in providing an independent review mechanism for parties assessed penalties relating to food and agriculture violations levied under Canadian law.

Dr. Donald Buckingham, Chairperson
Summer, 2012

Understanding the Tribunal Better

Mandate

The Canada Agricultural Review Tribunal (Tribunal) is an independent, quasi-judicial, arm's length body established by Parliament pursuant to section 4.1 of the *Canada Agricultural Products Act* (CAP Act).

The Tribunal's primary role is to provide oversight, through the exercise of its review jurisdiction, of federal agencies' use of penalties set out in the *Agriculture and Agri-Food Administrative Monetary Penalties Act* (AMP Act) in relation to agriculture and agri-food. These AMP systems form part of several federal agencies' "escalating scale of enforcement", providing an expeditious, non-punitive means to promote regulatory compliance. Alleged violators have the right to seek a review of certain AMP violations before the Tribunal. Decisions from three agencies (the Canadian Food Inspection Agency (CFIA), the Canada Border Services Agency (CBSA), and the Pest Management Regulatory Agency (PMRA), a branch of Health Canada), as well as certain decisions of the Minister of Agriculture and Agri-Food and the Minister of Health, currently fall under the Tribunal's review jurisdiction.

The Tribunal maintains a quasi-judicial, arm's length relationship with Agriculture and Agri-Food Canada and its Minister (and from Health Canada and its Minister), as required by the provisions of the CAP Act and the AMP Act. Subsection 4.2(1) of the CAP Act provides that no member of the Tribunal may concurrently hold employment in the federal public administration. Pursuant to subsection 8(1) of the same Act, the Tribunal is a court of record and has an official seal that is subject to judicial notice.

The legislative framework regarding the constitution and operation of the Tribunal demonstrates Parliament's intention to create a relationship between the Minister of Agriculture and Agri-Food and the Tribunal, while being mindful of the necessity for safeguarding the integrity and independence of the Tribunal to carry out its mandate. The Tribunal is responsible to Parliament through the Minister of Agriculture and Agri-Food.

Mission and Vision

The mission of the Tribunal is to provide an independent, fair, informal and timely review of the validity of notices of violation issued to any person by a federal agency under the AMP Act. The vision of the Tribunal is to safeguard the integrity of the AMP systems used by federal agencies to ensure compliance with agriculture and agri-food statutes. The Tribunal acts to balance the rights of Canadians with the protection of the health and well-being of Canadian consumers and the economic vibrancy of Canadian agriculture and agri-food industries.

Values

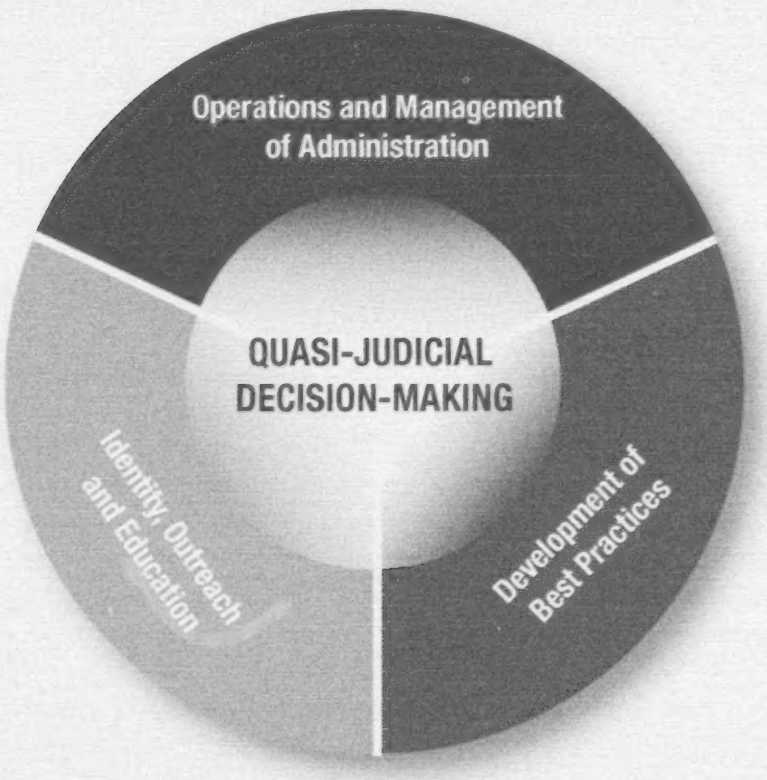
The values of the Tribunal are accessibility, accountability, diligence, effectiveness, efficiency, fairness, integrity, stewardship, risk management, timeliness, and transparency.

Authorized Locations for Tribunal Hearings

Province	Hearing Locations
British Columbia	Castlegar - Cranbrook - Fort Nelson - Fort St. John - Kamloops - Kelowna - Nanaimo - New Westminster - Penticton - Prince George - Prince Rupert - Vancouver - Victoria - Williams Lake
Alberta	Calgary - Edmonton - Grand Prairie - Jasper - Lethbridge - Medicine Hat - Red Deer - Wainwright
Saskatchewan	Estevan - Prince Albert - Regina - Saskatoon - Swift Current - Yorkton
Manitoba	Brandon - Dauphin - Morden - Winnipeg
Ontario	Barrie - Belleville - Brampton - Brockville - Cornwall - Hamilton - Kenora - Kingston - Kirkland Lake - Kitchener - London - Niagara Falls - North Bay - Ottawa - Owen Sound - Pembroke - Peterborough - St. Catharines - Sarnia - Sault Ste. Marie - Sudbury - Thunder Bay - Timmins - Toronto - Windsor
Quebec	Baie-Comeau - Chicoutimi - Drummondville - Granby - Malbaie - Matane - Montréal - Québec City - Rimouski - Rivière-du-Loup - Rouyn-Noranda - Saint-Jovite - Sept-Îles - Sherbrooke - Thetford Mines - Trois-Rivières - Val-d'Or - Valleyfield
New Brunswick	Bathurst - Campbellton - Edmundston - Fredericton - Moncton - Saint John
Nova Scotia	Digby - Halifax - Liverpool - New Glasgow - Springhill - Sydney - Truro
Newfoundland and Labrador	Corner Brook - Gander - St. John's
P.E.I.	Charlottetown - Summerside
Yukon	Whitehorse
Northwest Territories	Yellowknife
Nunavut	Iqaluit

Functions of the Tribunal

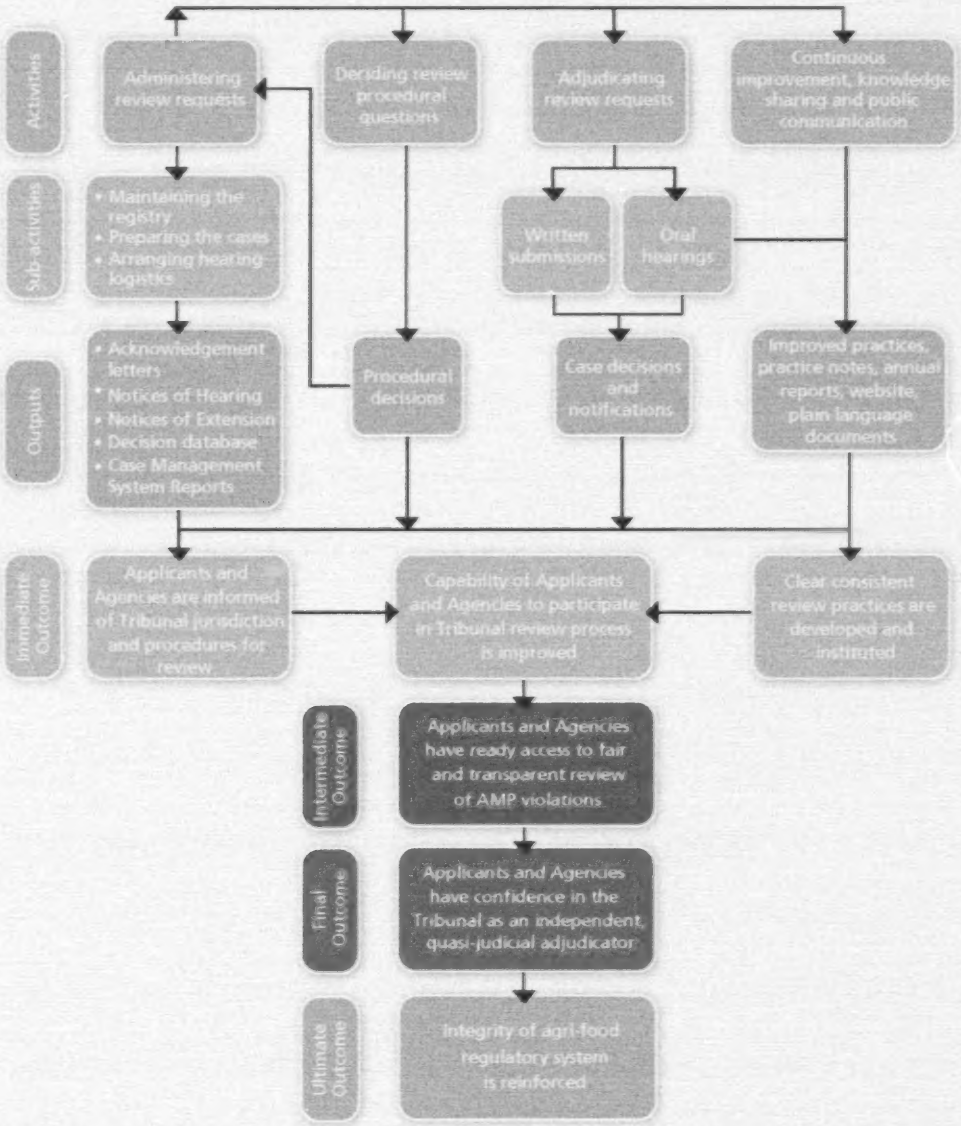
The core activity of the Tribunal is to provide a quasi-judicial review of Notices of Violation for contraventions specified under the *Agriculture and Agri-Food Administrative Monetary Penalties Act* and *Regulations* which can emanate from actions of three federal agencies or from decisions of the Minister of Agriculture and Agri-Food or the Minister of Health reviewing the decisions of these agencies.* While the bulk of the Tribunal's operational mandate is the provision of quasi-judicial reviews of administrative monetary penalties, the Tribunal must also engage in important ancillary activities which relate to identity, outreach and education activities, development of best practices and management functions. In the pages that follow, each of these Tribunal activities will be presented in terms of accomplishments in 2011-2012 and priorities for 2012-2013.



* *While it is still possible under the* Canada Agricultural Products Act *for the Tribunal to be requested to review decisions of the Board of Arbitration as set out in that legislation, such a request has not been brought before the Tribunal in almost 10 years, nor is the Board of Arbitration, to the knowledge of the Tribunal, currently staffed.*

2011-2012 in Review at the Tribunal

The year in review at the Tribunal best begins with a look at what the Tribunal is mandated to do. In 2011-2012, the Tribunal engaged students from the School of Public Policy and Administration at Carleton University to develop, with Tribunal personnel, a graphic representation and logic model which would capture the activities, sub-activities, outputs and outcomes of the Tribunal. The graphic below sets out the results of the students' examination of the Tribunal.


Activities
Administering review requests
Deciding review procedural questions
Adjudicating review requests
Continuous improvement, knowledge sharing and public communication
Sub-activities
• Maintaining the registry
• Preparing the cases
• Arranging hearing logistics
Written submissions
Oral hearings
Outputs
• Acknowledgement letters
• Notices of Hearing
• Notices of Extension
• Decision database
• Case Management System Reports
Procedural decisions
Case decisions and notifications
Improved practices, practice notes, annual reports, website, plain language documents
Immediate Outcome
Applicants and Agencies are informed of Tribunal jurisdiction and procedures for review
Capability of Applicants and Agencies to participate in Tribunal review process is improved
Clear consistent review practices are developed and instituted
Intermediate Outcome
Applicants and Agencies have ready access to fair and transparent review of AMP violations
Final Outcome
Applicants and Agencies have confidence in the Tribunal as an independent, quasi-judicial adjudicator
Ultimate Outcome
Integrity of agri-food regulatory system is reinforced

(The Tribunal wishes to thank Karen Croteau, Kevin Driscoll, Jim Melanson, and Christine Vaillancourt of Carleton University for their tireless efforts to produce the above logic model.)

Quasi-judicial Decision-making (Including Procedural Matters)

The Tribunal issued 26 first-instance decisions in 2011-2012, up from 24 in 2010-2011. Of these 26 decisions, 46% were requests for review stemming from CBSA-issued Notices of Violation; 42% were from CFIA-issued Notices of Violation; 4% were from PMRA-issued Notice of Violation while the remaining 8% were from applicants' request for review of a decision of the Minister of Agriculture and Agri-Food. Of the decisions issued, the Tribunal upheld 69% and overturned 31%. Of these 26 decisions, 77% were initiated by an applicant in English and 23% in French. Fourteen of the 26 decisions resulted from oral hearings held across the country and 12 from reviews of written submissions alone. The Tribunal issued 14 decisions from oral hearings heard in eight locations across Canada: in Ontario (Barrie(3), Kitchener/Waterloo(3), Toronto(3)); in Quebec (Quebec City(1), Drummondville(1)); in British Columbia (Vancouver(1) and New Westminster(1)); and in Manitoba (Dauphin(1)). Of the oral hearings, 12 were conducted in English and 2 in French. Eight of the decisions in the cases arising from written submissions alone were conducted in English with the other 4 in French.

From a caseload perspective, there were 62 active cases in the Tribunal system at the start of the year and 95 at the end of it, an increase of over 50% in one year! Among these cases, just over 15% (16/95) were inadmissible for review, either because they were filed beyond the limitation period, because the alleged violator had already paid the violation, or for some other administrative reason. Of the remaining 79 cases, persons requesting a review chose to proceed by way of oral hearing in 52 cases, with 27 cases reviewed by written submissions alone.

Oversight of the Tribunal by the Federal Court of Appeal in 2011-2012 was very limited with only 2 applications for judicial review of a Tribunal decision initiated (and then withdrawn) in the year. As a result, no cases were referred back to the Tribunal in 2011-2012 for reconsideration. This is in contrast to the 6 reconsideration decisions completed by the Tribunal in 2010-2011. In December 2011, the Tribunal requested directions, by way of a formal reference, from the Federal Court of Appeal as to the legally permissible methods of commencing a request for review before the Tribunal. The case had not been heard by the Federal Court of Appeal by the end of the fiscal year.

The Tribunal continued this year to upgrade accessibility to Tribunal documentation. Access to Tribunal decisions anytime by the public at its website (*http://cart-crac.gc.ca*), is now faster. Through a contract for services with LEXUM, a private service provider for decision management, the Tribunal can upload decisions issued to the parties within minutes or hours, improving on the weeks or months that have been the Tribunal's former practice. The Tribunal continues in its commitment to make its procedural decision-making more transparent by publishing "Practice Notes", now totalling 10 in all (5 issued in 2009-2010, 3 in 2010-2011 and 2 in 2011-2012). Finally, as a means to be more open and transparent and to permit the monitoring of quasi-judicial activities other than the hearing of cases and the issuing of decisions, a process has been established at the Tribunal to collect data on all procedural matters that are brought before the Tribunal for consideration and decision. For the period April 1, 2011 to March 31, 2012, the Tribunal received and resolved 74 procedural requests involving various matters such as initiation of requests for review, requests for extensions of time for the filing of documents, requests for adjournments of oral hearings, requests for the granting of subpoenas, and various other procedural matters requiring directions from the Tribunal.

For 2012-2013, given its increasing caseload, the Tribunal will strive, unless exceptional circumstances prevail: (1) to issue a decision within 120 days from the date on which a request for review has been heard by the Tribunal for cases by oral hearings and to issue a decision with 180 days from the date on which a request for review is declared "ready for decision" for cases by written submission alone; and (2) to resolve any procedural matter presented to it within 30 days from the date on which a request for procedural matter has been received by the Tribunal.

Identity, Outreach and Education

The Tribunal has undertaken several specific efforts to become more transparent, accountable, accessible, diligent and effective in the delivery of its mandate. Throughout the year, stakeholder groups were contacted to inform them of the activities of the Tribunal. As well, each stakeholder group has received the Tribunal's Annual Report and Practice Notes 9 and 10 of the Tribunal. They will also receive a copy of this Annual Report.

The primary activity of Tribunal personnel this past year, to enhance the Tribunal's identity and to make it more transparent to the general public, was the ongoing renewal of the Tribunal's website at *http://cart-crac.gc.ca*. Tribunal personnel have done a commendable job in this regard with the Tribunal's website being updated regularly. The website, as a result, now enjoys increased internet traffic.

Other identity and outreach initiatives undertaken in 2011-2012 included the Chairperson's courtesy visits with senior personnel at the Treasury Board Secretariat and Privy Council Office to discuss issues of mutual interest and, in particular, matters relating to the clarification of roles concerning Tribunal independence, governance and risk management.

The Chairperson, as well as conducting hearings and writing decisions, was also very active as a member in various associations of similarly situated organizations in the federal system: the Community of Federal Agencies–Group of Heads of Federal Agencies; the Heads of Federal Administrative Tribunals Forum; and the Council of Canadian Administrative Tribunals (CCAT). He was on the organizing committee of the CCAT annual conference that was held in Calgary in May 2012. He continued his contribution as co-lecturer at the "Fair Hearing" seminar of Federated Press where he had in 2010 acted as Course Leader for its "Decision Writing" seminar. The Chairperson was an invited speaker in Canada and abroad at conferences exploring agricultural and administrative law topics of relevance to the Tribunal's work.

As well, the Chairperson continued his commitment to students by encouraging them to intern at the Tribunal and by sitting as examiner on doctoral studies committees (at the University of Ottawa and at the Université de Montpellier 1). One of these doctoral students, Mohan Prabhu, conducted research central to the Tribunal's mandate and presented it in his dissertation entitled *Efficacy of Administrative Monetary Penalties in Compelling Compliance with Federal Agri-Food Statutes*. The Tribunal also supported student initiatives this year by engaging students in the work of the Tribunal (from Trinity Western University, University of Ottawa, Carleton University and Thomas M. Cooley Law School).

The main priorities for 2012-2013 for identity, outreach and education activities of the Tribunal are to maintain the currency of the Tribunal website, to continue to engage students at the Tribunal, and to develop further Practice Notes for the benefit of persons appearing before the Tribunal.

Development of Best Practices

The Canada Agricultural Review Tribunal was created in 1983 to review decisions of the Board of Arbitration regarding the licensing of, and disputes between, fruit and vegetable dealers in Canada. In 1997, the *Agriculture and Agri-Food Administrative Monetary Penalties Act* (AMP Act) added a new slice of review jurisdiction to the work of the Tribunal, namely the review of the Notices of Violation issued under any of nine agri-food Acts listed in the AMP Act. In 2000 and 2001, regulations were brought into force for three of the nine agri-food Acts (*Health of Animals Act, Plant Protection Act,* and *Pest Control Products Act*). This new jurisdiction significantly increased the workload of the Tribunal and has become the mainstay of its activities. In October of 2010, the Regulations under the AMP Act were amended with the result that, in some cases, the administrative monetary penalties for violations under the Act quadrupled. Minimum penalties are now set at $500 with maximum penalties up to $15,000 per event. These increased penalties have, no doubt, been a factor in the considerable increase in the number of requests for review filed with the Tribunal in 2011-2012.

To increase efficiencies and to modernize Tribunal practices, the Tribunal commenced a new initiative in September 2011 called the "Procedures Renewal Project (PRP)" which proposes a renewal of the procedural rules under which the Tribunal operates. These rules have not been revised since the late 1990s and some of them now impede the efficient operation of the Tribunal. Others do not provide a user-friendly interface for parties bringing their cases to the Tribunal, while still others require revamping to take into consideration the advent of e-mail, scanning and other technological advancements.

One of the priorities for 2012-2013 will be advancing the PRP to bring necessary procedural changes to fruition in the form of new revised rules of procedure for the Tribunal.

Management of Operations and Administration

Some specific accomplishments achieved in 2011-2012 included a systematic review of all current expenditures of the Tribunal, the development and implementation of various office policies and the completion of performance evaluations and of learning plans, at fiscal year-end, for all Tribunal employees. For the management of operations and administration, the Tribunal sees itself as working within an "organizational cloud" rather than a static organizational chart, to best access the services to carry out its mandate. The Tribunal, the Minister and his Departmental staff also continue to clarify the steps and processes required, from a practical perspective, to maintain the integrity of the arm's length and quasi-judicial nature of the Tribunal.

The Tribunal has engaged in several initiatives to identify and manage risk at the Tribunal this year. First, it has been able to secure access to legal services to provide advice and minimize legal risks associated with the day-to-day and longer-term operations at the Tribunal, whether of an adjudicative, procedural, policy or administrative nature. Second, due to the small staff complement of the Tribunal, maintaining an adequately staffed Tribunal remains a challenge in light of staff leave, labour relations and other obligations. Even with such challenges, the Tribunal and its personnel were, this past year, diligent and committed in completing the operational tasks necessary to have the Tribunal fulfill its mandate in the service of Canadians.

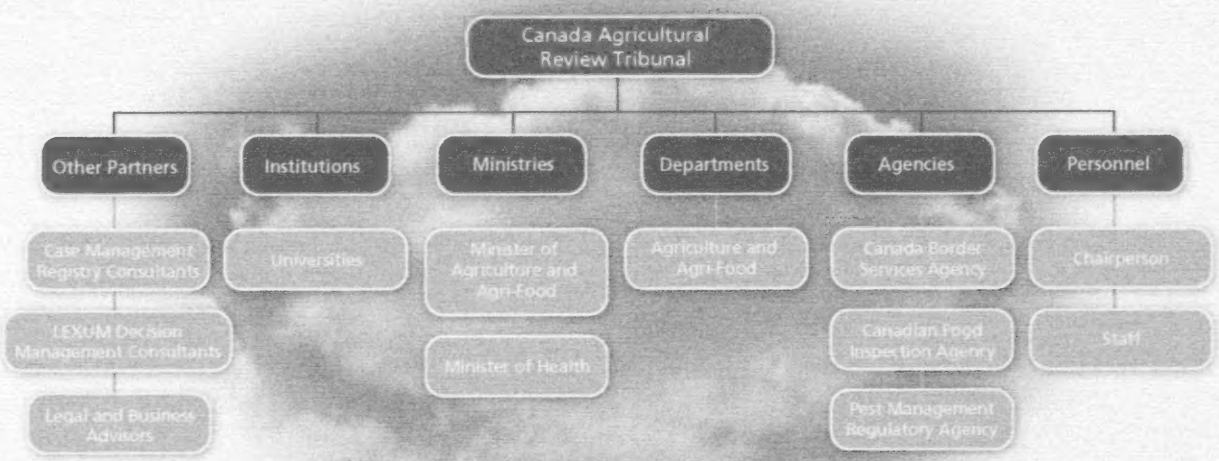
Efficient and professional administration of the Tribunal office requires the Chairperson, as Chief Executive Officer of the Tribunal, to have in place, in collaboration with the Minister and his Department, appropriate human resources and financial mechanisms. To advance these objectives, the Chairperson engaged in a series of meetings with senior officials within the Central Agencies (Department of Finance, Privy Council Office and Treasury Board Secretariat) and the Ministries of Agriculture and Agri Food and of Justice. With the assistance of its professional management and legal advisors, the Tribunal continues to forge best practices for a cooperative arm's length relationship between the Tribunal on the one hand and the Minister and his Department on the other. The assistance of these advisors made it possible for the Tribunal and the Department to conclude two new Memoranda of Understanding for Services in 2011-2012.

In 2012-2013, the Tribunal will continue to expand best practices to maintain the Tribunal's independent review mandate so as to further improve the delivery of the Tribunal's services to Canadians and to the Government of Canada through discussions and negotiations with the Minister and his Department, as well as with other government institutions. The Tribunal will continue to develop good practices for the financial management of Tribunal spending. In addition, Tribunal personnel will be encouraged to attend training courses to enhance employee job satisfaction and to promote better practices and efficient operations at the Tribunal, all while ensuring good stewardship of Tribunal resources. Finally, the human resources complement at the Tribunal will require reassessment and renovation to meet operational requirements at the Tribunal.

Building Relationships and Effectiveness at the Tribunal

The Tribunal is building relationships with institutions and individuals to assist in effectively carrying out its mandate. The Tribunal's organizational "cloud" and growing symbiotic relationships to advance its work is graphically represented below.

The Tribunal's Organization "Cloud"



(The Tribunal wishes to thank Jonathan Sampson from the University of Ottawa for his representation of the Tribunal's organizational "cloud".)

Students and the Tribunal's Internship Program

The Tribunal was blessed again this year, as in past years, with a strong contingent of eager students who come as unpaid interns to experience professional life at the Tribunal. As noted in the Tribunal's website, where its internship program is promoted,

> *"The Tribunal welcomes eager students seeking a real-life experience in a functioning administrative tribunal environment to work alongside the Chairperson and Tribunal staff, assisting in completing research assignments, special projects and other daily office duties pertaining to the operation of the Tribunal. In addition, the intern will experience interactions with government departments, particularly Agriculture and Agri-Food Canada, as well as other government agencies. The intern will also learn the basic skills of working in an office and the role that the Tribunal plays within the Canadian government at large. The experience provides students with pertinent education and work experience for academic credit at their home university but does not include any remuneration from the Tribunal or the Government of Canada. Interns may work at the office of the Tribunal, on the Central Experimental Farm in Ottawa, or externally."* *(http://cart-crac.gc.ca/CART-CRAC/display- afficher.do?id=1298319679727&lang=eng).*

In 2011-2012, nine students contributed to professional life at the Tribunal. The Tribunal's three interns were Rachelle Gannon (Trinity Western University, Winter Semester 2011), Benjamin Barkow (Thomas M. Cooley Law School, Fall Semester 2011) and Jonathan Sampson (University of Ottawa, Winter Semester 2012). As well, six other students completed, or are completing for credit at their respective universities, projects on the operation and performance of the Tribunal. Karen Croteau, Kevin Driscoll, Jim Melanson, and Christine Vaillancourt, all in the Graduate Diploma in Public Policy and Program Evaluation at Carleton University, met with Tribunal personnel several times this year to assist the Tribunal in developing evaluation and performance measures. Dara Jospe and Karmen Scott-Lisaingo from the Faculty of Law, University of Ottawa, interviewed Tribunal personnel and completed research leading to the preparation and submission of papers assessing the independence of the Tribunal under Canadian law as part of the "Dean's Research and Writing Fellows Program". It is truly a pleasure to welcome these students to the Tribunal as they complete work of great value to the Tribunal and bring energy and enthusiasm to the Tribunal workplace.

What recent interns have said about their time at the Canada Agricultural Review Tribunal...

"I had the pleasure of interning at the Tribunal as part of my experience with the Laurentian Leadership Centre (LLC) Program through Trinity Western University's Ottawa campus. My work at the Tribunal varied from performing research for the Tribunal Annual Report, to working on the Tribunal website, to completing a number of office jobs that the Tribunal staff might not otherwise have been able to perform. It was a rewarding and challenging workplace."

– Rachelle Gannon, Intern, Winter Semester 2011

"I cannot thank you all enough for all of your hospitality while I worked with you. It was truly an amazing experience and one that I will never forget! I hope that all is well and everything is running smoothly. If you ever need anything in the US, please do not hesitate to call!"

– R. Benjamin Barkow, Intern, Fall Semester 2011

"Interning at the Tribunal has been a thoroughly rewarding experience. Tribunal staffers provided me with numerous projects to work on, both alone and collaboratively, which provided me with valuable hands-on experience in a professional environment. I also learned quite a bit about Canada's regulatory policy and how it affects Canadians. This has sparked an interest in food policy, a field of study which I had previously overlooked. Interning at the Tribunal has been not only worthwhile, but an enjoyable experience."

– Jonathan Sampson, Intern, Winter Semester 2012

Tables and Graphs for 2011-2012 Activities

Tribunal Caseload – Table of Total Active Cases, Admissible Cases and Decisions

	2010-2011	2011-2012
Total Active Cases	62	95
Cases which were deemed inadmissible by the Tribunal	6	16
Total Admissible Cases before the Tribunal	56	79
Cases for which a hearing was requested	39	52
Hearing not yet scheduled	10	18
Hearing scheduled	8	10
Hearing completed awaiting decision	0	0
Cases withdrawn prior to a hearing	1	10
Cases withdrawn at or after hearing	0	0
Cases for reconsideration (FCA)	1	0
Hearing cases where decision issued	19	14
Cases where parties proceeded by written case alone	17	27
Cases not yet assigned	4	2
Cases assigned, awaiting decision	6	6
Cases withdrawn	2	7
Written cases where decision issued	5	12
Total First Instance Decisions by the Tribunal	24	26
Hearing		
Dismissed (decision of Agency upheld)	13	8
Allowed (decision of Agency overturned)	6	5
Dismissed (decision of Minister upheld)	0	0
Allowed (decision of Minister overturned)	0	1
Written Case		
Dismissed (decision of Agency upheld)	3	10
Allowed (decision of Agency overturned)	1	1
Dismissed (decision of Minister upheld)	1	0
Allowed (decision of Minister overturned)	0	1
FCA-Directed Reconsiderations by the Tribunal	6	0
Total Decisions Rendered by the Tribunal	30	26

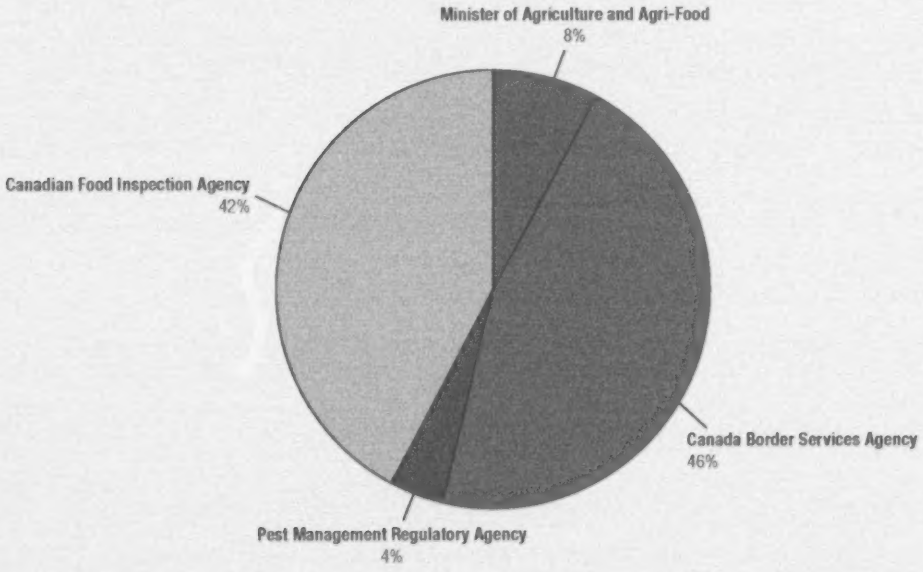
Two decisions of the Tribunal (*Ontario Stockyards v. Canada (CFIA)* 2011 CART 012 (July 29, 2011); FCA file A-308-11; and *Ontario Stockyards v. Canada (CFIA)* 2011 CART 013 (July 29, 2011); FCA file A-304-11) were taken for judicial review by the Attorney General for Canada (AGC) to the Federal Court of Appeal in August 2011 but were discontinued by the AGC on January 12, 2012 before the cases were heard. No other reviews of Tribunal decisions were before the Federal Court of Appeal in 2011-2012. However, in 2011, the Tribunal commenced a reference before the Federal Court of Appeal for directions on the admissibility of a request for review that was filed with the Tribunal by ordinary mail rather than by one of the prescribed methods for the filing of requests. In April of 2012, the Court ruled that requests filed by ordinary mail were inadmissible (Case name: *In the matter of Section 14 of the* Agriculture and Agri-Food Administrative Penalty Regulations (April 26, 2012) 2012 FCA 130).

Tribunal Decisions – Table by Language, Agency and Type of Case

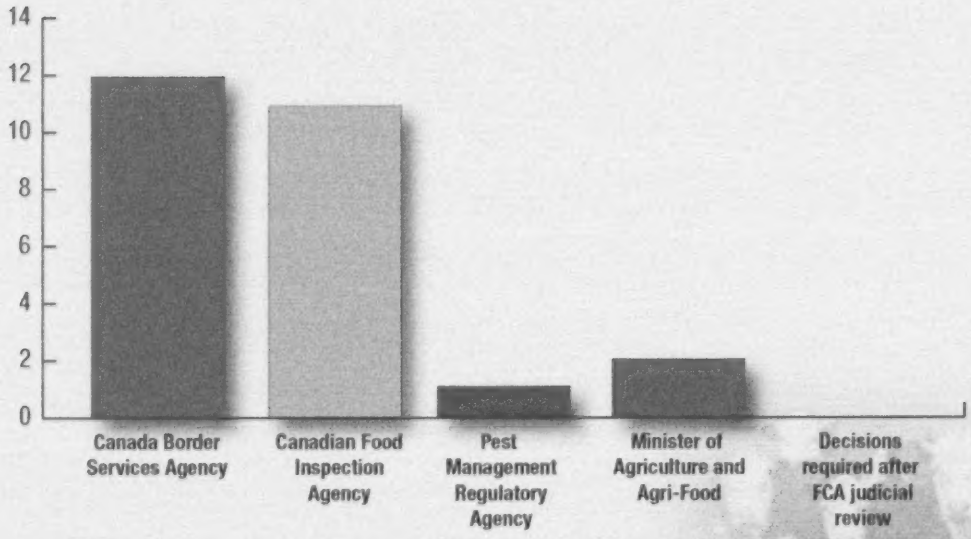
	2010-2011	2011-2012
Total number of decisions issued (by language)	**30**	**26**
From oral hearings	19	14
conducted in English	16	12
conducted in French	3	2
From written submissions	5	12
conducted in English	5	8
conducted in French	0	4
From reconsiderations from FCA	6	0
conducted in English	5	0
conducted in French	1	0
Total number of decisions issued (by agency)	**30**	**26**
For review of CFIA decision	17	11
oral hearings	15	8
written submissions	2	3
For review of CBSA decision	6	12
oral hearings	4	4
written submissions	2	8
For review of PMRA decision	0	1
oral hearings	0	1
written submissions	0	0
For review of decision by Minister Agriculture and Agri-Food	1	2
oral hearings	0	1
written submissions	1	1
From reconsiderations ordered by FCA	6	0
oral hearings	6	0
written submissions	0	0
Total number of 1st instance decisions issued (by result)	**24**	**26**
Notices of Violation from CFIA	17	11
upheld by Tribunal	13	8
dismissed by Tribunal	4	3
Notices of Violation from CBSA	6	12
upheld by Tribunal	3	10
dismissed by Tribunal	3	2
Notices of Violation from PMRA	0	1
upheld by Tribunal	0	0
dismissed by Tribunal	0	1
Review Decisions from Minister Agriculture and Agri-Food	1	2
confirmed by Tribunal	1	0
varied or set aside by Tribunal	0	2
Review Decisions from Minister of Health	0	0
confirmed by Tribunal	0	0
varied or set aside by Tribunal	0	0

Tribunal Decisions – Graphs of Percentage and of Number by Source

Tribunal Decisions – Percentage by Source
April 1, 2011 to March 31, 2012

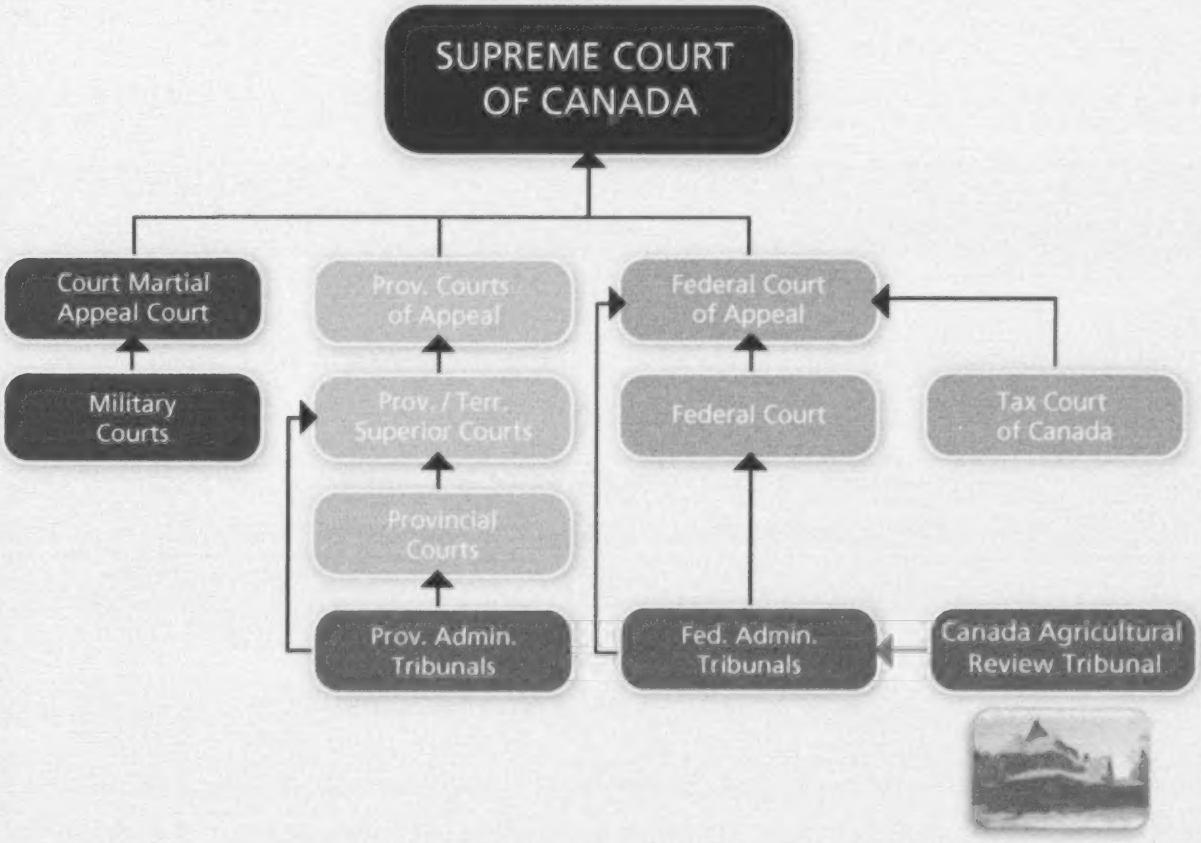


Tribunal Decisions – Number by Source
April 1, 2011 to March 31, 2012



The Tribunal in the Canadian Legal System

The Tribunal occupies a humble position in the Canadian legal system as shown by the schematic drawing below. However, its role is important to those Canadians whose actions are challenged by federal food and agriculture enforcement agencies. The Tribunal represents a cost-effective, informal legal process for Canadians to have access to a fair and impartial legal forum to address their concerns. If either party is unsatisfied with the Tribunal's decision, that party may wish to proceed for judicial review of the decision to the Federal Court of Appeal.



(This schematic drawing is courtesy of Karen Croteau, Kevin Driscoll, Jim Melanson, and Christine Vaillancourt of Carleton University and Jonathan Sampson of the University of Ottawa.)

A sampling of the nature of the Tribunal's work is illustrated by the following cases it decided this fiscal year:

T.B. v. Canada (Canada Border Services Agency), 2012 CART 6

The applicant, a traveller returning from Ghana, was alleged to have imported seven kilograms of fresh beef into Canada without the necessary documentation and without declaring the meat at her initial point of entry. The applicant argued that she was not aware that food for personal use was required to be declared upon arrival. Having reviewed all the evidence, the Tribunal found that the applicant's defence was inadmissible and so upheld the violation and the monetary penalty.

P.K. v. Canada (Canadian Food Inspection Agency), 2011 CART 12

The applicant, a livestock transport truck driver, was alleged to have delivered a load of cattle that could not be transported without undue suffering. Upon inspection, some of the cattle being transported were observed to be thin, weak and in generally poor condition with one cow dead in the trailer and another non-ambulatory. The applicant was issued a warning for this offence but challenged the warning to the Tribunal. Having reviewed all the evidence, including the testimony of the Agency veterinarian, the Tribunal found that the Agency had met the burden of proving that the applicant had transported an animal that could not be transported without undue suffering. The warning issued by the Agency was upheld by the Tribunal.

R.D. v. Canada (Pest Management Regulatory Agency), 2011 CART 20

The applicant, an owner and operator of a 1,200 tree apple orchard, was alleged by the Agency to have used indoxacarb, a pesticide not registered for use in Canada. The PMRA launched its Apple Verification Program in 2008 and the applicant's orchard was randomly selected to be inspected. After two positive test results from the laboratory analysis of apple tree leaves alleged to have originated from the applicant's orchard, a $4,000 monetary penalty was issued. The applicant requested a review from the Tribunal. Having reviewed all the evidence, including exhibits ranging from satellite photographs to PMRA analyst reports, the Tribunal found that the Agency had not met the burden of proving that the applicant had used an unregistered pest control product. The penalty issued by the Agency was, therefore, dismissed by the Tribunal.

J.P. v. Canada (Minister of Agriculture and Agri-Food), 2011 CART 8

The applicant was first issued a Notice of Violation from the Canadian Food Inspection Agency for allegedly continuing to transport an animal that was unfit for transportation. Having received this Notice, the applicant chose to exercise his right of review of the facts before the Minister of Agriculture and Agri-Food. The Minister issued a decision upholding the Notice of Violation and ordered the applicant to pay the $2,000 fine to the Agency. The applicant then sought a review of the Minister's decision by the Tribunal. Having reviewed the decision, the Tribunal found that the Minister's decision revealed an error in law, specifically on the ground that the evidence did not support the decision. As a result, the decision was overturned and the applicant was not liable for the monetary penalty.

Challenges and Opportunities

Looking forward to the fiscal year 2012-2013, three areas of opportunities and challenges are readily discernible. Each of these areas provides the Tribunal, in collaboration with its partners, an opportunity to adopt new mechanisms to meet increasing demands for services with fewer resources. The three areas are:

1. Coping with an increasing caseload while maintaining the delivery of timely hearings and quality decisions;
2. Effectuating appropriate and timely renewal at the Tribunal while continuing to build a cooperative arm's length relationship with Tribunal partners, including the Central Agencies (Treasury Board Secretariat, the Department of Finance, the Privy Council Office and the Public Service Commission), and the Minister of Agriculture and Agri-Food and his Department; and
3. Securing and maintaining an adequate staff and financial base upon which to support the operations necessary to carry out the mandate of the Tribunal, particularly during a period of fiscal restraint.

When the current Chairperson commenced his tenure in July 2009, a part-time member was also available to hear and decide cases at the Tribunal, as had been the case since 2003. However, the part-time member's term expired in October 2009 and no new part-time appointment was made in 2010 or 2011. As a result, the Chairperson has been required to hear and decide all procedural matters and cases coming before the Tribunal since November 2009. Crucial to coping with the increasing caseload coming to the Tribunal is the appointment of a second decision-maker at the Tribunal. Therefore the Minister's announcement in late June 2012 of the appointment of Dr. Bruce La Rochelle as a part-time member of the Tribunal was greeted with enthusiasm and gratitude by Tribunal personnel. Dr. La Rochelle, a lawyer and holder of a doctorate in business administration, will greatly assist the Tribunal in carrying out its mandate. With the Chairperson and the part-time member hearing cases and issuing decisions, the Tribunal will be able to reduce the backlog of cases while keeping within the Tribunal's current expenditure envelope.

Effectuating appropriate and timely renewal of the Tribunal will involve Tribunal personnel continuing to re-examine administrative, registry and decision-making practices at the Tribunal. Renewal that will be undertaken include measures to: (1) ensure the realization of new efficiencies; (2) increase the timeliness of the issuing of decisions; (3) improve response time to other stakeholders' requests; and (4) better align with government standards for accountability. As well, the ongoing process upon which the Tribunal has embarked to renew the procedural framework regulating Tribunal hearings and decision-making will bring Tribunal practices into the 21st century and in line with the practices of other tribunals across the country.

Finally, the opportunity and challenge of securing and maintaining an adequate staff and financial base upon which to support the operations necessary to carry out the mandate of the Tribunal will continue to be undertaken. During the 2011-2012 fiscal year, the Tribunal took measures to reduce hearing and travel expenditures which resulted in a reduction of 25% in that category of Tribunal expenditures. In light of expenditure reductions included in the Federal Budget of March 2012 reducing the Tribunal's financial envelope in fiscal years beyond the coming one, the Tribunal will prepare for further efficiencies by

continuing to negotiate service arrangements between the Department, and/or other similarly situated bodies, to realize cost savings in the conduct of Tribunal business and for the good management of public resources. Finally, the human resources complement at the Tribunal will require an assessment and renovation for the coming years at the Tribunal.

The Tribunal will work diligently to increase transparency, clarify governance structures and continue to manage risk and change at the Tribunal. These initiatives will permit easier access by Canadians to this quasi-judicial, arm's length body which is mandated to fairly and expeditiously adjudicate disputes arising from Canadian agriculture and agri-food matters, even within the challenging realities of fiscal restraint and an increasing caseload at the Tribunal.

Tribunal Expenditures

	2010-2011	2011-2012
Salaries & Benefits	351,971	328,652
Hearing & Travel Expenses	21,897	15,795
Property, Equipment Rental & Maintenance	39,037	39,119
Postage, Courier & Telecommunications	1,833	1,062
Publishing, Printing & Outreach	1,801	2,605
Training, Meetings & Conferences	1,017	3,750
Professional, Special & Contract Services	71,328	87,189
Materials, Supplies & Related Miscellaneous Expenses	15,695	13,781
TOTAL	504,579	491,953

How to Reach the Tribunal

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Send us an e-mail:
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Send us a letter or visit us in person at:
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